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# Subdivision and Land Development in Pennsylvania

PLANNING SERIES #8



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PLANNING SERIES #8

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# I. Subdivision and Land Development in Pennsylvania

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## Preface

*Subdivision and Land Development in Pennsylvania (Planning Series Publication #8)* is one of a series of 10 planning publications produced by the Governor's Center for Local Government Services (Center) as a means to educate both professionals and non-professionals on the ways that planning and land use management are achieved within the commonwealth. The planning publications were first developed in the 1970's and in subsequent editions have been revised to incorporate differences in the overall planning viewpoint, offer up-to-date best practices, and reflect the latest changes in Pennsylvania planning law. Each publication addresses a specific planning or land use method enabled through the Pennsylvania Municipalities Planning Code (MPC), Act 247 of 1968, P.L. 805, as reenacted and amended, 53 P.S. § 10101, et seq., and used by municipalities throughout the commonwealth.

The Center's 10 Planning Series Publications are as follows:

- No. 1 – Local Land Use Controls in Pennsylvania
- No. 2 – The Planning Commission
- No. 3 – The Comprehensive Plan
- No. 4 – Zoning
- No. 5 – Technical Information on Floodplain Management
- No. 6 – The Zoning Hearing Board
- No. 7 – Special Exceptions, Conditional Uses and Variances
- **No. 8 – Subdivision and Land Development in Pennsylvania**
- No. 9 – The Zoning Officer
- No. 10 – Reducing Land Use Barriers to Affordable Housing

Subdivision and land development regulations are enacted by a municipality to maintain acceptable site design standards for development of land within a municipality and to coordinate public improvements on the properties. The *Subdivision and Land Development in Pennsylvania* publication is specifically designed to:

- Address the statutory authority of the powers of a municipality in regulating subdivision and land development within the boundaries of the municipality.
- Provide a summary of provisions that may be included in a subdivision and land development ordinance pursuant to the MPC.
- Outline procedures for enacting and amending a subdivision and land development ordinance.
- Describe standards that municipalities must follow in administering a subdivision and land development ordinance, specifically with regard to the processing of subdivision and land development proposals.
- Describe an approach for implementing a conservation subdivision approach to development.

## II. Introduction

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The subdivision and land development ordinance is the most commonly used development control mechanism in Pennsylvania. Over 90 percent of the municipalities have subdivision and land development regulations in effect, either by their own ordinance or by a county ordinance. It is the most basic of land use regulations. Subdivision is the creation of new lots or property lines, while land development involves construction of buildings and improvements. Land is a valuable natural resource, and its division and development create a major portion of the physical surroundings and greatly define the character of communities and quality of life for citizens.

The major purposes of subdivision and land development regulations are to provide adequate sites for development and public use, to maintain reasonable and acceptable design standards, and to coordinate public improvements with private development interests. More specifically, subdivision and land development regulations help achieve several objectives:

- They help contain municipal costs by having developers pay for public improvements necessitated by the development, and by requiring development design that is efficiently supported by municipal services.
- They protect the municipality from problems and costs it may have to inherit later from unplanned and poorly designed development.
- They ensure a decent quality of life for citizens by promoting healthy walkability, preventing stormwater damage, protecting from excesses of noise, lighting, or other pollution, and ensuring accessibility for fire and police services.
- They help a municipality attract investment in homes and businesses which are more these days seeking out great places with a quality built and natural environment.

A subdivision and land development ordinance differs from a zoning ordinance. A subdivision and land development ordinance does not control use of land or buildings. It does not define zones or districts in the municipality in which certain uses are permitted and others not, and in which there are different standards for density or intensity of development. A subdivision and land development ordinance's design standards apply uniformly throughout a municipality.

### III. Statutory Overview of Authority

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Article V of the MPC grants powers to municipalities to regulate subdivisions and land development within the municipality by enacting a subdivision and land development ordinance. The ordinance shall require all plans for subdivision and land development of land situated within the municipality to be submitted for approval to the governing body or, in lieu thereof, to a planning agency designated in the ordinance for this purpose.

It is important to note the MPC specifies that where a municipality has enacted planned residential development (PRD) regulations in its zoning ordinance in accord with Article VII of the MPC, the development standards and plat approval procedures governed by the PRD regulations and Article VII shall be followed. Subdivision and land development standards for PRDs may be different than the standards and requirements otherwise imposed by the municipality's subdivision and land development ordinance.

The MPC authorizes municipalities and counties to enact subdivision and land development ordinances. Where a county enacts an ordinance, and a borough, city, township, town, or home rule municipality has not enacted an ordinance, the county ordinance is in effect. Where the county has an ordinance and the municipality subsequently enacts its own ordinance, the county ordinance is repealed in that municipality. There are options for a municipality and the county to interact. A municipality may arrange for the county planning agency to administer the municipal ordinance, or a municipality may adopt the county subdivision and land development ordinance by reference. For more information on county duties and responsibilities, see the section in this document titled "The Role and Function of the County."

Article V of the MPC prescribes for subdivision and land development ordinances:

- Content of the ordinance and what matters may be regulated.
- How the ordinance is enacted or amended.
- The basic process and timeframe that must be followed in submission, review, and decision on a subdivision or land development plan and any public improvements to be constructed.



## IV. What are Subdivision and Land Development?

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The MPC provides controlling definitions of “subdivision” and “land development.” These definitions and meanings, in addition to other common and necessary terms, are required to be used in a local subdivision and land development ordinance.

“**Subdivision,**” as defined in Section 107(b) of the MPC, is:

[T]he division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development: Provided however, That the subdivision by lease of land for agricultural purposes into parcels of more than ten acres, not involving any new street or easement of access or any residential dwelling shall be exempted.

“**Land development,**” as defined in Section 107(b) of the MPC, is:

- (1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land for any purpose involving:
  - (i) a group of two or more residential or nonresidential buildings, whether proposed initially or cumulatively, or a single nonresidential building on a lot or lots regardless of the number of occupants or tenure; or
  - (ii) the division or allocation of land or space, whether initially or cumulatively, between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups or other features.
- (2) A subdivision of land.
- (3) Development in accordance with Section 503 (1.1).

Section 503(1.1) of the MPC allows:

Provisions for the exclusion of certain land development from the definition of land development contained in section 107 [of the MPC] only when such land development involves:

- (i) the conversion of an existing single-family detached dwelling or single-family semi-detached dwelling into not more than three residential units, unless such units are intended to be a condominium;
- (ii) the addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building; or
- (iii) the addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park.

**The courts have carved out from the definition of “land development” certain development activities not involving buildings that the courts observed lack traditional indices of “large-scale” land development – intensity of use, new roads, utilities, common open space, etc. To date, the courts have concluded that a billboard and cellular telecommunication tower structures are not land development. Municipalities are strongly advised to consult with their solicitors as to the current law on whether the subdivision and land development ordinance should not be administered as to any particular development.**

As the land development definition implies, development of even one lot for a single nonresidential building or for two or more tenants or prospective occupants constitutes a land development. Thus, an individual desiring to construct a convenience store, a pharmacy, a shopping center, an office complex, or an apartment building on a single parcel of land would be required to follow the procedures, provisions, and standards in the subdivision and land development ordinance.

Likewise, all other definitions necessary to explain any administrative terms or phrases vital to the proper implementation of the subdivision and land development ordinance must be clearly stated in the subdivision and land development ordinance. Words and phrases defined in Section 107 of the MPC should be incorporated into the subdivision and land development ordinance without change. Examples include “subdivision,” “land development,” “manufactured home park,” and “substantially completed.”

## V. Enacting and Amending the Ordinance

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The MPC sets forth required procedures for the consideration and enactment of a subdivision and land development ordinance or an amendment to an existing subdivision and land development ordinance (except where noted, later use in this section of the term “ordinance” refers to both the enactment of a subdivision and land development ordinance and an amendment thereto). Conformance with these procedures is mandatory, as they protect the due process rights of the regulated public.

The MPC requires that both the municipal planning agency (if it did not prepare the proposed ordinance) and the county planning agency be given an opportunity to review and submit recommendations on the proposed ordinance prior to the governing body holding a required public hearing on the ordinance. The MPC sets different review periods for a new ordinance and an amendment to an existing ordinance. The review period for a new ordinance is 45 days; the review period for an amendment to an ordinance is 30 days. Where the proposed amendments to the existing subdivision and land development ordinance are extensive and substantial, allowing the planning agencies a 45 day review period is prudent and otherwise may be necessary to satisfy the requirements of the MPC. The review period is an opportunity for the planning agency to provide its recommendations to the governing body; however, should a planning agency fail to submit recommendations within the required review period, the governing body is under no obligation to extend the time for review and recommendation and may proceed with the public hearing.

The MPC requires that the governing body hold at least one public hearing (or more if necessary) at which all interested parties are given the opportunity to be heard on the proposed subdivision ordinance. This public hearing must be advertised according to the MPC requirements for a public notice. Public notice of the public hearing must be published in a newspaper of general circulation in the municipality during two successive weeks. The first notice may not be published more than 30 days prior to the public hearing and the second notice may not be published fewer than seven days prior to the public hearing.

**The Statutory Construction Act of 1972, 1 Pa.C.S. § 1501, et seq. provides that the phrase “successive weeks” means calendar weeks. However, it further provides that “at least five days shall elapse between each publication.”**

In addition to publication requirements, where the notice of the proposed ordinance does not contain the full text of the proposed ordinance, a full copy of the proposed ordinance must be provided to the newspaper with the public notice to the published. Additionally, a copy of the proposed ordinance must be provided to the county law library.

The public notice requirements serve several purposes. The first is to clearly state the intent of the planning agency or governing body to prepare and enact a particular proposed ordinance or amendment. The second is to make the local citizenry aware of the planning efforts within the municipality and to afford them an opportunity to participate in the planning effort.

If after the public hearing “substantial amendments” are made to the proposed ordinance, before proceeding to vote on its enactment the governing body is required, at least ten days prior to enactment, to readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.

The courts have provided guidance on making a determination as to whether a revision is “substantial” with respect to zoning ordinances; such guidance is relevant to subdivision and land development ordinances. The courts have advised that the determination must be made by considering the revision “in relation to the legislation as a whole.” The courts have further advised that a revision is “substantial “in relation to the legislation as a whole” when it results in either (i) a significant disruption in the continuity of the proposed legislation or (ii) an appreciable change in the overall policy within the municipality.

There appears to be consistency in the decisions of the courts that a revision that “merely makes regulations more stringent than initially proposed” is not substantial.

**Whether the revisions made to a proposed zoning ordinance are “substantial” or “insignificant,” the courts have held that the proposed revisions must be submitted to the municipal and county planning agencies again for review and recommendation. The courts have not addressed whether such requirement also applies to revisions to a proposed subdivision and land development ordinance. It is recommended that municipalities provide the planning agencies with such opportunity. Municipalities should consult with their solicitors regarding the required process.**

The MPC imposes a separate notice requirement relating to the enactment of (voting upon) an MPC ordinance or amendment thereto.

Unlike the notice of the public hearing, the notice of an intent to enact is published one time only, no more than 60 days and no fewer than seven days prior to the meeting at which passage of the ordinance will be considered. If the full text of the proposed subdivision and land development ordinance is not set forth in the notice, then a copy must be supplied to the newspaper at the time the notice is published and an attested copy filed in the county law library. If the governing body delays enactment beyond the 60 days, an additional notice of intent to vote should be published. In order to save costs, the notice of intent to enact an ordinance may be included with one of the two public notices for the public hearing, provided its publication meets the time requirements for both the enactment and public hearing notices.

Following enactment of the proposed subdivision and land development ordinance, a copy of the adopted ordinance must be placed in the municipal ordinance book as required by the ordinance provisions set forth in the respective state municipal codes. Within 30 days following the governing body’s action adopting the proposed subdivision and land development ordinance, a copy of the adopted ordinance must be provided to the county planning agency or, in counties where no planning agency exists, to the governing body of the county in which the municipality is located.

The procedures discussed above are extremely important. As explained by the Courts, these procedural rules provide notice and the opportunity to be heard and have the purpose of protecting the interest of the public in the legislative process. They are a condition precedent to the validity of the subdivision and land development ordinance. If these procedures are not followed, the subdivision and land development ordinance could be declared null and void by a court of law in procedural challenge to the ordinance.

**Under Section 1002.1-A of the MPC, an individual challenging the validity of a land use decision on the basis of a defect in the procedures for enactment of the ordinance who brings the challenge within 30 days of enactment of the ordinance need only establish that the municipality did not strictly follow the procedural requirements set forth in the MPC. When a procedural challenge is brought after 30 days, the municipality need only demonstrate substantial compliance with the procedural requirements. The challenger must prove that, because of the alleged defect in procedure, either the public was denied notice sufficient to permit participation or those whose substantive property rights were or could be directly affected were denied an opportunity to participate.**

## VI. Contents of a Subdivision and Land Development Ordinance

Section 503 of the MPC states that a subdivision and land development ordinance may include but need not be limited to the following provisions, which are presented in summary to the full requirements as listed in MPC:

- Provisions for the submittal and processing of plats, including the charging of review fees, and specifications for such plats, including certification as to the accuracy of plats and provisions for preliminary and final approval and for processing of final approval by stages or sections of development (*note certain conditions are further specified in the MPC*).
- Provisions for the exclusion of certain land development from the definition of land development contained in Section 107 only when such land development involves:
  - The conversion of an existing single-family detached dwelling or single family semi-detached dwelling into not more than three residential units, unless such units are intended to be a condominium;
  - The addition of an accessory building, including farm buildings, on a lot or lots subordinate to an existing principal building; or
  - The addition or conversion of buildings or rides within the confines of an enterprise which would be considered an amusement park.

**Section 503(1.1) of the MPC permits – but does not mandate – a municipality to provide in its local ordinance for the exclusion from land development regulation of one or more of only the three forms of development expressly identified in 503(1.1) and described above.**

- Provisions for insuring that:
  - The layout or arrangement of the subdivision or land development shall conform to the comprehensive plan and to any regulations or maps adopted in furtherance thereof;
  - Streets in and bordering a subdivision or land development shall be coordinated, and be of such widths and grades and in such locations as deemed necessary to accommodate prospective traffic, and facilitate fire protection;
  - Adequate easements or rights-of-way shall be provided for drainage and utilities;
  - Reservations, if any, by the developer of any area designed for use as public grounds shall be suitable size and location for their designated uses; and
  - Land which is subject to flooding, subsidence or underground fires either shall be made safe for the purpose for which such land is proposed to be used, or that such land shall be set aside for uses which shall not endanger life or property or further aggravate or increase the existing menace.
- Provisions governing the standards by which streets shall be designed, graded and improved, and walkways, curbs, gutters, street lights, fire hydrants, water and sewage facilities and other improvements shall be installed as a condition precedent to final approval of plats in accordance with the requirements of Section 509.
- Provisions which take into account phased land development not intended for the immediate erection of buildings where streets, curbs, gutters, street lights, fire hydrants, water and sewage facilities and other improvements may not be possible to install as a condition precedent to final approval of plats, but will be a condition precedent to the erection of buildings on lands included in the approved plat.
- Provisions which apply uniformly throughout the municipality regulating minimum setback lines and minimum lot sizes which are based upon the availability of water and sewage, in the event the municipality has not enacted a zoning ordinance.

- Provisions for encouraging and promoting flexibility, economy and ingenuity in the layout and design of subdivisions and land developments, including provisions authorizing alterations in site requirements and for encouraging other practices which are in accordance with modern and evolving principles of site planning and development.
- Provisions for encouraging the use of renewable energy systems and energy-conserving building design.
- Provisions for soliciting reviews and reports from adjacent municipalities and other governmental agencies affected by the plans.
- Provisions for administering waivers or modifications to the minimum standards of the ordinance in accordance with section 512.1.
- Provisions for the approval of a plat, whether preliminary or final, subject to conditions acceptable to the applicant and a procedure for the applicant's acceptance or rejection of any conditions which may be imposed, including a provision that approval of a plat shall be rescinded automatically upon the applicant's failure to accept or reject such conditions within such time limit as may be established by the governing ordinance.
- Provisions and standards for insuring that new developments incorporate adequate provisions for a reliable, safe and adequate water supply to support intended uses within the capacity of available resources.
- Provisions requiring the public dedication of land suitable for the use intended and, upon agreement with the applicant or developer, the construction of recreational facilities, the payment of fees in lieu thereof, the private reservation of the land, or a combination, for park or recreation purposes as a condition precedent to final plan approval (*note certain conditions are further specified in the MPC*).

As the wording of the MPC suggests, each municipality adopting an ordinance determines its content and structure. The MPC provides basic guidelines for ordinance content, and the municipality may use fewer or more requirements based upon local need. The MPC provides for flexibility for municipalities and counties to shape planning areas based on inherent regional logic or importance. Such areas might be natural resource based (e.g., watersheds), cultural resource based (e.g., historic structures), or of regional significance (e.g., prime agricultural land in a developing municipality). Municipalities should use subdivision and land development ordinances to try to ensure that growth in the community is effectively managed.

## Manufactured Home Park Regulations

The MPC clearly provides for manufactured home parks to be regulated through a municipal subdivision and land development ordinance. Section 501 states that:

Provisions regulating mobile home parks shall be set forth in separate and distinct articles of any subdivision and land development ordinance adopted pursuant to Article V, or any planned residential development provisions adopted pursuant to Article VII.

Therefore, if a municipality has enacted a subdivision and land development ordinance, regulations for manufactured home parks should be included as a separate article.

Other considerations all but compel inclusion of manufactured home park provisions as a distinct article in any subdivision and land development ordinance. Manufactured home parks differ significantly from traditional single-family subdivisions. A manufactured home park is a land development that may be under single ownership or control, much like a planned residential development. Common areas for open space, recreation, or other services may be provided and maintained by the owner. Lot sizes are usually smaller, and lots are usually leased or rented rather than purchased. Water and sewer systems that are not public are centralized for the entire park. These design and layout considerations or factors make it advisable to prepare and enact separate and distinct standards for regulating manufactured home parks. To include provisions as a separate article in any subdivision and land development ordinance is not only consistent with MPC requirements, but it also demonstrates a commitment to reasonable regulation of manufactured home park developments.

## VII. Administration of Subdivision and Land Development Regulations

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The governing body has flexibility in designating plan approval powers. The governing body may reserve approval powers to itself or delegate such approval powers to the planning agency. In any event, approval authority must be clearly stated in the municipal subdivision and land development ordinance. Where a county enacts subdivision and land development regulations, and a borough, city, township, or home rule municipality has not enacted its own subdivision and land development ordinance, the county regulations are in effect. Where the county has an ordinance, and the municipality subsequently enacts its own ordinance, the county ordinance is repealed in that municipality. A municipality that has enacted its own subdivision and land development ordinance may by separate ordinance designate the county planning agency, with its concurrence, to administer the municipal ordinance.

There are two aspects to the administration of the subdivision and land development ordinance: procedures and standards. The MPC prescribes procedures that municipalities must follow in processing subdivision and land development proposals. Municipal officials are responsible for the preparation and enactment of reasonable design standards or specifications necessary to achieve local development objectives. Common sense and legal precedents require that procedures and standards be uniformly applied. A municipality has a major responsibility to assure that subdivision and land development regulations are administered equitably according to procedural requirements and time limitations contained in the MPC.

However, unlike the MPC's stipulation that municipalities must appoint a zoning officer to administer the zoning ordinance, the MPC does not require municipalities to appoint a subdivision and land development ordinance officer. Typically, this duty is handled by the planning staff of a county or municipality, or falls to the individual who is also the zoning officer, to the codes enforcement officer, or to the municipal engineer. Some municipalities assign plan review work by contract to a consultant planner or engineer. The duties entail, but are not limited to, the following:

1. Receive and review all applications and submissions related to any proposed subdivision or land development for completeness.
2. Determine compliance with the requirements of the subdivision and land development ordinance and coordinate among the various number of internal and external stakeholders participating in the process, including the municipal secretary, local governing body, local planning commission, municipal engineer and solicitor, local sewage enforcement officer, county planning commission, county conservation district, Department of Transportation, Department of Environmental Protection, public utility companies, and the developer/applicant prior to plan submission, prior to plan approval, during construction, and after construction has been completed.
3. Bring applications to the planning commission and governing body for consideration and action.
4. Issue written stop, cease, and desist orders and other written orders for correction of all conditions found to be in violation of provisions of the subdivision and land development ordinance.
5. Create and maintain standardized forms for applications and other required documents.

Administration of the subdivision and land development ordinance also involves coordination with state and federal laws and other municipal ordinances. These include but are not limited to regulations covering waterways and wetlands, erosion, driveways entering highways, stormwater and floodplain management, water and sewer facilities, zoning, and building codes.

## VIII. Role and Functions

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### The Role and Function of the County

There are various roles that a county may have in the subdivision and land development process. First, Section 502 of the MPC authorizes the county to adopt and enforce subdivision and land development regulations. After enactment, a county must send a certified copy of the ordinance, as well as any future amendments, to each municipality within the county. These regulations remain in effect until the municipality adopts its own subdivision and land development ordinance.

Second, a municipality may elect to adopt the county ordinance by reference, but use municipal staff to perform the administrative duties.

Third, when a municipality enacts its own subdivision and land development ordinance, it must file a certified copy with the county planning agency effectively repealing the county ordinance in that municipality. Where the municipality enacts its own subdivision and land development ordinance, all applications for subdivision or land development must still be sent to the county for review. A county may charge a fee sufficient to cover the review costs. The applicant is responsible to pay this fee. County review comments are to be sent to the municipality within 30 days from the date an application was forwarded to the county for review. If county comments are not received, a municipality can act on the plan after 30 days have passed. A plan cannot be recorded unless the plan officially notes review by the county planning agency.

Fourth, a municipality may also, by separate ordinance, designate the county planning agency as the body responsible for the review and approval of plans under the municipal subdivision and land development ordinance. Of course, before this approach is used, the county agency must first be consulted for concurrence.

A fifth role that a county planning agency has is to offer mediation to contiguous municipalities, if requested. Section 502.1 of the MPC requires the county planning commission to "...offer a mediation option to any municipality which believes that its citizens will experience harm as the result of an applicant's proposed subdivision or development of land in a contiguous municipality, if the municipalities agree."

### The Role and Function of the Planning Agency

The planning agency (planning commission, planning department, or committee of the governing body) plays a central role in the subdivision and land development process. It may upon request prepare and recommend to the governing body a subdivision and land development ordinance for enactment, and it may make recommendations to the governing body regarding approval or denial of individual subdivision and land development applications. The governing body, by ordinance, may delegate approval authority to the planning agency for the subdivision and land development applications (MPC Section 501). Where such authority is delegated, the planning agency's traditional advisory role to the governing body shifts to a decision-making role on matters relating to the approval or denial of subdivision and land development applications pursuant to Section 508 of the MPC. This same grant of power is also afforded to the planning agency on matters relating to the approval of planned residential developments as regulated under Article VII of the MPC.

## The Role of Local Government and Public Improvements

It is a basic responsibility of local government to provide and guide the expansion of municipal services and public improvements so that development occurs in an orderly, rational, and sustainable manner. Conversely, it is impermissible for local government to withhold municipal services or facilities as a means to gain land use or development objectives that place unreasonable restrictions on growth and on the landowner. The Pennsylvania Supreme Court, even prior to enactment of the MPC, gave notice that municipalities cannot restrict growth or development by failing to provide necessary public facilities and services if the community can provide them. Although the regulation under review was a zoning provision, the principles apply to any regulation that has the same effect. Regarding government's responsibility to provide for growth, the Supreme Court said: "A zoning ordinance whose primary purpose is to prevent the entrance of newcomers in order to avoid future burdens, economic and otherwise, upon the administration of public services and facilities cannot be held valid." *National Land and Investment Company v. Easttown Township Board of Adjustment*, 419 Pa. 504, 215 A. 2d 597 (1965). Governing bodies have the tools necessary to effectively meet some of the demands of a growing community. It is only prudent that elected officials use available planning tools to carry out the responsibility of providing guidance and supporting normal future community growth. With respect to subdivision and land development regulations, municipalities should consider the tools afforded through the MPC's provisions regarding municipal [transportation] capital improvements (Article V-A), public dedication of land or fee in lieu of (Section 503 (11)), and financial security guaranteeing capital improvements (Section 509).

A 2012 amendment to the MPC added a new responsibility for local governments regarding public facilities. Sections 508.1 and 711(f) of the MPC require municipalities to notify the school district superintendent of any plans for a residential development or planned residential development that were granted final approval by the municipality during the preceding month. The intent of this provision is to make school districts aware of approved residential development so they may consider impacts to projected school enrollments and school facility needs.



## **IX. Land Development in Absence of Zoning**

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Section 503(4.1) of the MPC authorizes municipalities that have not enacted zoning to include uniform provisions in their subdivision and land development ordinances that regulate minimum setback lines and minimum lot sizes based on the availability of water and sewage. Areas within a municipality that have public water and sewer, for example, may use this provision to provide a greater degree of development density over areas lacking these services that in turn require (for health and safety reasons) larger lots to accommodate on-lot groundwater wells and sewage disposal systems.

## **X. Sewage Facilities Planning and Subdivision or Land Development**

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The Pennsylvania Sewage Facilities Act, Act 537 of 1965, 35 P.S. § 750.1, et seq. (Act 537), requires each municipality to prepare and adopt an official plan for sanitary sewer facilities serving the municipality. Act 537 plans, as they are known, are to take into consideration aspects of planning, zoning, population estimates, engineering, and economics to determine the present and future sewerage needs of the municipality. Municipal officials must review their official sewage facilities plan to ensure that sewage facilities planning is consistent with comprehensive planning efforts under the MPC.

A proposed subdivision or land development must demonstrate that it can provide safe and adequate sanitary sewer facilities serving the proposed lots or development. Depending on the nature and scale of the development, applicants often must submit a request – a “planning module” – for revision of the municipality’s official Act 537 plan. A planning module must be approved by the municipality with oversight from the Pennsylvania Department of Environmental Protection, the regulating agency for Act 537. The planning module must be referred to the municipal planning agency for review of consistency of the proposed sewage facilities with the municipal comprehensive plan and land use regulations.

Municipalities and their planning agencies typically review subdivision and land development plans and sewage facilities planning modules concurrently. Many municipal subdivision and land development ordinances require indication of approval of sanitary sewer facilities as a pre-requisite for final subdivision or land development plan approval.

For more information on Act 537 plans and requirements related to subdivisions and land developments, contact the Department of Environmental Protection. Regional offices typically have staff that provides oversight of Act 537 in their regions.

## XI. Process and Procedures

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### Application Procedures and Requirements

A major responsibility under the subdivision and land development ordinance is the establishment of uniform procedures and criteria for processing applications. If stipulated by the ordinance, each application can be reviewed and subsequently approved or disapproved based on criteria developed in the best interest of the municipality. Guidance and procedures for processing subdivision and land development plans are specified in Section 508 of the MPC as follows:

**A municipality may adopt procedures for determining whether an application is complete upon submittal. This completeness review does not involve a merit-based review. Rather, the completeness review assesses whether the information required by the municipal subdivision and land development ordinance has been provided with the submittal. An application determined to be administratively incomplete would be returned to the applicant; the applicant should be informed in writing of the deficiencies of the application that render it to be incomplete. The procedural deadlines in the MPC are not triggered if the submittal has been determined to be administratively incomplete.**

- All applications must be acted upon and a decision rendered to the applicant not later than 90 days following the date of the regular meeting of the governing body or planning commission (whichever first reviews the application) next following the date an application is filed; if the regular meeting is more than 30 days after the filing of the application, the 90-day period begins after the thirtieth day from the date the application was filed with the authorized representative of the municipality. *MPC Section 508.*

**A subdivision and land development ordinance should prescribe that an application shall not be accepted as “filed” until the application is complete, (i.e., it includes all information and complete drawings). This allows a municipality to do completeness checks at the counter rather than at meetings, and withholds start of the 90-day time clock until a fully-complete application is received.**

- The decision must be in writing. *MPC Section 508(1).*
- The written decision must be delivered no later than 15 days following the issuance of the decision. *MPC Section 508(1).*

**The MPC is unclear as to whether the 15-day period falls within the 90-day period for decision on the plan. The Commonwealth Court has held that the 15-day provision applies upon issuance of the decision. Municipalities should consult with their solicitors as to the time requirements.**

- Where disapproving the application, the written decision must specify any defects, describe the requirements that have not been met, and cite sections of the subdivision and land development ordinance relied upon for disapproving the application. *MPC Section 508(2).*
- Failure to render and communicate a written decision within the required time and in the manner prescribed constitutes a deemed approval of the application. *MPC Section 508(3).*

**The MPC contains no express notice provisions with respect to a claimed deemed approval of a land development or subdivision plan. This contrasts with Section 908(g) of the MPC relating to deemed approvals in a zoning context, which the courts have determined is not self-effectuating but requires published notice by either the municipality or the applicant. However, a Pennsylvania court opined that the reference in Section 1002-A of the MPC to Section 908(g) makes the notice provision of 908(g) applicable in the land development and subdivision context for purposes of determining when an appeal period begins to run. *Peterson v. Amity Twp. Bd. of Supervisors*, 804 A.2d 723 (Pa. Cmwlth. 2001).**

**A municipality may not file a land use appeal challenging the validity of a plan “deemed approved.” However, a person aggrieved by a plan that has been deemed approved may file a land use appeal challenging the “deemed approved” plan’s compliance with the requirements of the municipal subdivision and land development ordinance. The time for filing the appeal (30 days) begins, at the latest, with the failure of the municipal body or planning agency to issue the written decision within 15 days of the oral decision. Neither the applicant nor the municipality can act on the plan until such time as the period for appeal has expired or until proceedings before the court on appeal have concluded.**

- A public hearing may be held prior to acting on any subdivision or land development plan. A public hearing is not required. *MPC Section 508(5)*.
- Upon the approval of a final plan, the developer must record the final plan within ninety days in the Office of the Recorder of Deeds of the county in which the property is located. *MPC Section 513*.
- Building permits should not be issued until the final plan has been approved and recorded. *MPC Section 515.1*.
- Any final plan that requires access to a highway under the jurisdiction of the Pennsylvania Department of Transportation cannot be finally approved unless the plan contains a notice that a highway occupancy permit is required in accordance with Section 402 of P.L. 1242, the “State Highway Law.” *MPC Section 508(6)*.

In addition to the time-based procedures described above, the MPC stipulates the following protection to an applicant for subdivision or land development plan approval:

- From the time an application is filed and pending approval or disapproval, “no change or amendment of the zoning, subdivision, or other governing ordinance or plan shall affect the decision on such application adversely to the applicant, and the applicant shall be entitled to a decision in accordance with the provisions of the governing ordinances or plans as they stood at the time the application was filed.” *MPC Section 508(4) (i)*.
- When a preliminary plan application has been approved, the applicant is entitled to approval of the final plan in accordance with the terms of the approved preliminary application. *MPC Section 508(4) (i)*.
- When a preliminary or final plan is approved without conditions or with conditions accepted by the applicant, “no subsequent change or amendment in the zoning, subdivision or other governing ordinance or plan shall be applied to affect adversely the right of the applicant to commence and to complete any aspect of the approved development in accordance with the terms of such approval within five years from such approval.” *MPC Section 508(4) (ii); see also 508(iii)*.
- When the required improvements on the plan have been “substantially completed” within the five-year period (or any extension granted by the governing body), no change of municipal ordinance or plan enacted subsequent to the date of filing of the preliminary plan may modify or revoke any aspect of the approved final plan pertaining to zoning classification or density, lot, building, street, or utility location. *MPC Section 508(iv)*. Additionally, in the event of a phased residential subdivision or land development where the developer has not defaulted on any conditions to the approval of the plan, including compliance with a phased schedule, an additional period for protection of three years shall apply from the date of final plat approval for each section. *MPC Section 508(5) (vi)*.

**Section 107(a) of the MPC defines “substantially completed” to mean “where, in the judgment of the municipal engineer, at least 90% (based on the cost of the required improvements for which financial security was posted pursuant to section 509) of those improvements required as a condition for final approval have been completed in accordance with the approved plan.”**

- If a special exception or conditional use is a subdivision or land development, an applicant is entitled to submit a subdivision or land development plan within six months of the zoning approval in accordance with the subdivision and land development ordinance as they stood when the zoning (special exception or conditional use) application was filed. *MPC Section 917*.

## Development Permit Extension Act

By provision in Article XVI-I of the Fiscal Code, Sections 1601 and 1608, Act 46 of 2010, the Pennsylvania Legislature provided for the “automatic extension” of subdivision and land development plans, among other municipal permits and approvals, through July 2, 2013. Act 87 of 2012 amended Act 46 to establish an extension period through July 2, 2016. The Development Permit Extension Act, Act 54 of 2013, established a stand-alone act. The Development Permit Extension Act provides that the “automatic extension” is not available to any approvals granted after July 2, 2013.

No court with statewide jurisdiction has commented on the provision. However, the Lancaster County Court of Common Pleas in *In Re: Appeal of Keystone Customer, Inc. and Fox Clearing, LLC and the York County Court of Common Pleas in Logan Greens Community Assoc., Inc. v. Church Reserve, LLC* (as well as the Pennsylvania Environmental Hearing Board) interpreted the automatic extension provision language as a tolling (suspension) provision. These courts and the EHB concluded that the remaining life of a permit or approval issued as of the time of the enactment of Act 87 (or the life of a permit or approval issued or granted after the enactment of Act 87 through July 2, 2013) would be tacked on at the conclusion of the extension period (now July 2, 2016).

## Sketch Plans and Pre-application Conferences

The concept of a sketch plan is not specifically addressed in the MPC. However, it is not uncommon for a subdivision and land development ordinance to contain optional provisions concerning submission of a sketch plan. Optional provisions can provide for a simple outline of the proposed project and will usually include such items as a location map, a property line map, and general layout of the proposed subdivision or land development. Planning commissions or municipalities that encourage developers to voluntarily submit sketch plans afford an opportunity to both the developer and the community to discuss the proposed project on an informal basis.

At the sketch plan phase, the municipality may be able to provide some input into the project design, and the developer may learn of factors that may affect the design or layout that could avoid costly mistakes in the preparation of a preliminary plan. Sketch plans or pre-application meetings provide an opportunity to improve the quality of development that is advantageous to the community and the developer. All parties to the land development application are encouraged to get together as early as possible in the process.

Sketch plans are less expensive for the developer to prepare than preliminary and final plans. A developer is thus more likely to be willing to modify a plan based on comments from the planning commission before he has gone to the expense of submitting a full preliminary plan application.

**If a municipality mandates submission of a sketch plan (either apparent or by use of mandatory language (e.g., shall, must, etc.)), the sketch plan, in the eyes of the courts, must be processed under the requirements of Section 508 of the MPC and if approved, accords the applicant vested interest in the sketch plan as submitted same as if it was a preliminary plan.**

Another innovative approach used by some municipalities involves the formation of a pre-application review conference committee procedure. This procedure can streamline and increase the effectiveness of any plan review process. The review committee is composed of the developer and any designated professional agents involved in the plan preparation for the proposed development. All municipal review representatives that participate in the normal review process have the opportunity to look at the plan prior to preliminary plan submission.

By instituting this procedure, the initial phase of the review process can be less contentious and more apt to foster consensus building than the more formal preliminary plan review process. The pre-application conference process can increase cooperation among the developer, his agents, and the municipality. The result can be an application submitted as a preliminary plan that is acceptable to the developer and municipality as the formal review period begins.

## Preliminary and Final Plans

The MPC contemplates that the approval of a plan is, in most cases, a two-step process: a preliminary plan followed by a final plan. Generally, the preliminary plan is intended to provide a more generalized plan of development, including phasing. The final plan provides design details for immediate development. This process requires that a preliminary plan be submitted and an approval obtained. A final plan meeting any terms or conditions under which the preliminary plan was approved is then prepared and submitted. Only upon securing final plan approval can the plan be recorded and lot sales and/or development commence.

**A municipality may provide for expedited procedures for “minor” subdivision or land development plans. Typically such procedures are reserved for plans proposing lot line adjustments or the creation of lots or development which require no new public improvements or substantial stormwater management.**

There are some differences in the kind of information that is required with the preliminary plan versus the final plan. Both plans contain detailed information, but to avoid cluttered plans, some of the information at the preliminary plan stage is not included on the final plan where other information is necessary. For example, a preliminary plan almost always shows existing topography of the site, an item that is usually absent from the final plan. The final plan will provide all necessary survey, construction, and engineering data. The final plan is the plan that will be recorded at the county, but some of the information necessary for review and approval at the preliminary stage is not needed for the final plan or plan of record.

The preliminary plan is perhaps the most important of the plans submitted. Approval of this plan will virtually guarantee approval of the final plan, so long as the final plan is consistent with the approved preliminary plan and otherwise meets the requirements for a final plan. Therefore, the preliminary plan should be examined closely for compliance with the subdivision and land development ordinance. The plan cannot be arbitrarily disapproved. If it meets the requirements of the subdivision and land development ordinance (and also complies with zoning requirements in communities that have adopted zoning) the plan must be approved.

## Phased Development

A developer proposing a large-scale development requiring public improvements may decide to, or out of necessity have to, construct the development in phases or sections. Section 509 of the MPC authorizes provisions for phased developments. Where the developer submits a preliminary plan calling for the installation of improvements over a period of more than five years, the developer must submit a schedule detailing deadlines within which applications for final plan approval of each phase or section are intended to be filed. The applicant is required to update the final plan submission schedule on an annual basis before the anniversary of the preliminary approval. Any modification to the original schedule is subject to approval of the governing body in its discretion.

Section 508(4)(v) of the MPC requires that each section or phase in any residential land development or subdivision, except for the last section, contain a minimum of 25 percent of the total number of dwelling units as depicted on the preliminary plan. The MPC authorizes the governing body, in its discretion, to lessen the percentage.

As previously described, Sections 508(4) (v) and (vi) of the MPC provide for a period of time in which a phased development is protected from intervening changes in local regulations. However, Section 508(5) (viii) of the MPC provides that, where a developer fails to adhere to the initial schedule or an approved modified phasing schedule, the governing body has discretion to subject that section or phase to intervening changes in local regulations. This discretionary authority applies to any changes enacted after the date of initial preliminary submission, and includes zoning, subdivision, land development, and other governing ordinances.

## Relief from Requirements

From time to time, a situation may arise in which the standards of the subdivision and land development ordinance cause an undue hardship or prove unreasonable in application. In Sections 503(8) and 512.1, the MPC provides for relief from the strict application of a requirement in the form of a modification or waiver.

Although all are requests for relief, modification or waiver must not be confused with relief granted by a variance from requirements of a zoning ordinance. The criteria for the grant of a modification/waiver and a variance differ. Additionally, the grant of a variance lies exclusively with the zoning hearing board; the grant of a modification/waiver rests with the governing body or, where the planning agency has been delegated plan approval authority, with the planning agency.

Section 503(8) of the MPC authorizes municipalities to include in their subdivision and land development ordinances “provisions for administering waivers or modifications to the minimum standards of the ordinance in accordance with [Section 512.1 of the MPC].” The MPC does not define either modification or waiver. In practice, a modification seeks an adjustment from a requirement, while a waiver seeks release from the requirement.

Section 503(8) authorizes waivers or modifications “when the literal compliance with mandatory provision is shown to the satisfaction of the governing body or planning agency... to be unreasonable, to cause undue hardship, or when an alternative standard can be demonstrated to provide equal or better results.”

Section 512.1 titled specifically “Modifications,” sets forth a standard for grant that differs slightly from the one found in Section 503(8). Section 512.1(a) authorizes the grant of a modification “if the literal enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that such modification will not be contrary to the public interest and that the purpose and intent of the ordinance is observed.” Section 512(b) further provides that the request be the minimum necessary to give relief.

The remainder of Section 512.1 of the MPC sets forth procedures relating to a request for relief. A request “shall accompany and be part of the application for development.” The request must be in writing and shall state “in full the grounds and facts of unreasonableness or hardship on which the request is based.” The request shall identify the provision of the subdivision and land development ordinance from which relief is sought. A written record of the action on the request must be made and maintained by the municipality.

Where the governing body has reserved to itself the power to approve a plan, the governing body may refer the request for modification to the planning agency for advisory comments.

Care must be taken to assure that any modification or waiver is necessary, represents the minimum possible modification, and will not jeopardize public safety. A different layout or design may eliminate the need for a modification or waiver. On the other hand, where an alternative standard than the one required by the ordinance can be demonstrated to provide equal or better results and still observe the purpose and intent of the ordinance, a modification may allow for an improved design. At no time, however, should justification for the grant of a modification under this standard be casually used as a substitute for a proper amendment to the subdivision or land development ordinance, where such amendment is appropriate.

## Conditional Approvals

The governing body (or planning agency if delegated authority) has 90 days (from the first regular meeting of the planning agency following plan submittal) to: (i) approve the plan, (ii) approve the plan providing certain conditions are met, or (iii) disapprove the plan.

A plan that meets the requirements of the subdivision and land development ordinance is entitled to approval. A plan that does not meet the requirements of the subdivision and land development ordinance may be denied. However, the courts have vested discretionary authority in the governing body to condition approval of an otherwise deficient plan, rather than deny it.

The courts have advised that, under the following circumstances, rather than denying a subdivision or land development plan, conditions should be attached to plan approval:

- A condition designed to correct a minor deficiency with compliance with a requirement of the subdivision and land development ordinance, for example an incorrect zoning district reference.
- A condition providing for the issuance of a permit or approval by another agency, for example a PennDOT highway occupancy permit.
- A condition intended to provide for an executed, formal third-party agreement to document a commitment made of record, for example a shared parking agreement where both parties have communicated to the municipality an intent to enter into the agreement.
- A condition grounded in a specific requirement of the subdivision and land development ordinance, for example requiring improvement to an abutting roadway or payment of a fair share of construction of the improvement where the governing body determines that there is a reasonable relationship between the need for the improvement and traffic generated by the subdivision and where the ordinance specifies the design standard for the improvement.

Again, a governing body may in its discretion attach a condition to the approval to remedy the deficiency; however, it is not required to do so, and failure to comply with a requirement in the subdivision and land development ordinance may be grounds for denial of the plan. In any event, a municipality may not condition its approval of a subdivision plan on a developer meeting a standard not contained in the ordinance and which the applicant rejects.

A municipality should not use conditional approvals as a substitute for diligent ordinance administration. Municipal officials should make reasonable effort with an applicant to gain timely submission of required information and compliance with ordinance requirements without conditions. An option is to seek an extension of the 90-day time frame for approval, to which the applicant must agree in writing. However, where necessary and appropriate despite diligent efforts, a municipality may approve with conditions.

Any proposed condition of approval must be accepted by the applicant. If the applicant refuses to accept a condition and the municipality proceeds with the conditional approval, the legal outcome is a rejection of the plan. It cannot be grounds for a claim of a deemed approval. The developer may challenge the disputed condition by means of a land use appeal to the county court of common pleas.

By contrast, any condition that the developer willingly accepts (by making a voluntary offer of the condition or by agreement with the municipality's proposal), even when the condition imposes a standard not found in the subdivision and land development ordinance, binds the applicant. A record of the developer's acceptance of a condition should always be made, either by means of a written developer's agreement or clear reporting in the minutes of the governing body that the developer was asked to agree with the condition and indicated agreement. The condition itself should be clearly stated on the record. The ordinance should provide a procedure by which an applicant can accept or reject conditions within a specific time limit.

When a plan is approved with conditions, the conditions must be satisfied before the plan may be recorded. The MPC 90-day time requirement for recording a plan is not triggered until the conditions are fully satisfied. The attachment of time deadlines for compliance with conditions of approval is appropriate to limit the time between the conditional approval of a subdivision plan and its recording.

## Coordination/Tracking Applications

Where subdivision and land development regulations are in effect, Section 513 of the MPC provides that: "... [T]he recorder of deeds of the county shall not accept any plat for recording unless such plat officially notes the approval of the governing body and review by the county planning agency..." In addition, developers, subdividers, and realtors are not exempt from any penalties which may result from the sale or transfer of lots by use of a description of the property by metes and bounds. In either situation, any municipality may refuse to issue any permit or revoke a permit issued in error to improve or further improve real property that has not been approved in accordance with the subdivision and land development ordinance.

It is advantageous to designate a single official to be responsible for receiving and tracking subdivision and land development applications. This person would be responsible for ensuring that applications are complete, review fees paid, and plans distributed to other reviewing agencies. Some municipalities have found it beneficial to develop a checklist that can accompany the application through the review process. Such a checklist may serve to place the entire process into clearer perspective. Any checklist must be tailored to provisions and requirements included in your own municipal ordinance.

Municipalities are encouraged to work closely with the municipal engineer and the municipal solicitor throughout the development process. The best way to minimize potential problems is through a regular program of inspections and monitoring during the construction phase. Although some items may require an engineer, other qualified municipal inspectors may be able to perform some of the necessary inspections.

The key to successfully implementing a subdivision and land development ordinance is its administration. Administration must be approached with strict observance of the MPC requirements and in accordance with the literal terms of the subdivision and land development ordinance, as well as other applicable local land use control measures.

## Exactions

An exaction is a development condition imposed on a parcel of land that requires the developer to mitigate anticipated negative impacts of the development. The Pennsylvania legislature has provided limited authority to impose exactions on development.

### Public Dedication of Land for Recreation Purposes

A municipality may provide standards in its subdivision and land development ordinance for the provision of recreational lands and facilities within and to serve the occupants of a residential development. Additionally, Section 503(11) of the MPC provides special, direct authority for a municipality to require a developer, as a condition to the approval of a final subdivision plan, to publicly dedicate land to the municipality for parks and recreation purposes or to enter agreement to make a payment in lieu of construction.

Authority to require public dedication or to impose a recreation impact fee requires that the municipality have first adopted a recreation plan (either as part of the comprehensive plan or special purpose plan). In addition to the recreation plan, the municipality's subdivision and land development ordinance must contain definite principles and standards for park and recreation facilities and fees in lieu of. The authority to impose and collect recreation impact fees is limited by two mandates:

- (i) Land or fees available through the recreation impact fee must be "used only for the purpose of providing, acquiring, operating or maintaining park or recreational facilities reasonably accessible to the development" burdened with the impact fee. *MPC Section 503(11)(iii)*
- (ii) The amount and location of land or fees imposed "shall bear a reasonable relationship to the use of the park and recreational facilities by future inhabitants of the development or subdivision." *MPC Section 503(11)(v)*



Under this authority, a municipality may accept from the developer (1) payment of fees in lieu of dedication of land; (2) the construction of recreational facilities; (3) private reservation of land; or (4) a combination thereof.

The Pennsylvania Land Trust in partnership with the Pennsylvania Department of Conservation and Natural Resources (DCNR) has published guidance pertaining to the public dedication of land and fees-in-lieu pursuant to MPC Section 503(11). The publication is available online at [http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr\\_002299.pdf](http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_002299.pdf).

It is recommended that the planning commission and recreation board periodically hold a joint meeting to assure coordination of recreation plan components with community recreation needs and implementation of provisions calling for park and recreation facilities through the subdivision and land development administrative processes.

### **Transportation Impact Fees**

The MPC authorizes a municipality to require a developer to construct sufficient roadways within a subdivision and to improve adjoining roads as necessary to handle the increased traffic generated by the development. To implement that authority, a municipality must include appropriate standards and requirements in its subdivision and land development ordinance.

The MPC expressly prohibits a municipality from imposing a requirement for construction of any “off-site” road improvements or payment of fees in lieu of construction of “off-site” road improvements, except where the municipality has properly enacted a transportation impact fee.

**By contrast, there is no comparable limitation on the authority of PennDOT to require off-site improvements relating to development. Where the required traffic impact study conducted to obtain a highway occupancy permit for a development identifies a deficiency on a state or local road within the scope of the study and demonstrated to be impacted by the development, PennDOT can require the developer to make the improvements necessary to correct the deficiency. The scope of a PennDOT-required traffic impact study typically extends beyond the portion of the road immediately adjacent to the property to be developed.**

Article V-A of the MPC is the exclusive authority to enact and collect off-site transportation impact fees. Statutory provisions mandate very specific and complex procedures that a municipality must follow in order to enact an impact fee ordinance. To lawfully impose a transportation impact fee, a municipality is required to have strictly followed the procedures set forth in the MPC, which include having a comprehensive plan, zoning ordinance, and subdivision and land development ordinance.

The municipality must establish an impact fee advisory committee, designate transportation service areas, and conduct a series of studies. These studies consisting of a land use assumption report and a roadway sufficiency analysis, and a transportation capital improvements plan must be approved in order to enact an impact fee ordinance. The adoption of an ordinance establishes the transportation impact fee. The transportation impact fee must be supported by the required studies; an excessive fee is unlawful.

Impact fees cannot be used to pay for operation and maintenance expenses, repairs, pass-through trips, or trips attributable to existing development. Growth and the pace of growth are among the factors to be weighed when deliberating whether to enact an impact fee ordinance. Such an ordinance represents just one more tool available to a municipality to promote orderly development. However, each municipality will have to make a cost-benefit determination to see if enacting an impact fee ordinance will likely be a net revenue producer over a given period of years.

The Pennsylvania Department of Transportation has published the *“Transportation Impact Fees: A Handbook for Pennsylvania Municipalities,”* which is available online at <http://www.mcmtrans.com/pdfFiles/Act%202009%20PennDOT%20Impact%20Fee%20Handbook.pdf>.

Aside from the above, no other impact fees or exactions for offsite improvements are authorized under law or can be required by municipal regulation.

## Financial Guarantees for Construction of Public Improvements

Section 509 of the MPC mandates that a municipality not approve a final subdivision or land development plan unless required public improvements are completed or completion is assured by financial security provided by the developer and available for use by the municipality to complete the required improvements. Municipalities that fail to obtain financial security from the applicant for construction of required public improvements are financially responsible for completing improvements not completed by the developer through the expenditure of public funds.

Completion of required public improvements prior to final plan approval requires substantial front-end capital expenditure by the developer. In lieu of completion, the MPC permits a developer to provide financial security to the municipality to guarantee that improvements will be completed. However, a developer is not required to provide financial security to a municipality for any improvement for which PennDOT receives financial security in connection with a highway occupancy permit.

The MPC vests the municipal engineer with the authority to determine the appropriate costs of construction of required public improvements for use in setting the amount of the necessary financial security. The governing body retains jurisdiction over acceptance of the financial security offered by the developer. Financial security may be in the form of cash (escrowed by the developer or municipality), performance bond, letter of credit, or other generally acceptable form of performance security. A municipality may not refuse any lawful form of financial security. As construction proceeds, a developer may ask for the release of the financial security for completed improvements. If over time the cost of construction increases or the provided financial security is determined to be insufficient to cover the cost of constructing any remaining improvements, the municipality may and should require that additional financial security be provided.

On occasion a cautious lender will not provide financial guarantees until presented with a signed final subdivision or land development plan. In such a situation, the developer has an approvable final plan, but cannot satisfy the lender's requirement. In this situation, Section 509(b) of the MPC permits a developer to request a signed copy of a municipal resolution or letter indicating approval of the final plat contingent upon the developer obtaining satisfactory financial security. The resolution or contingent approval expires and is deemed to be revoked if the financial security is not executed within 90 days, unless a written extension is granted.

***How is the amount of the financial security determined?*** The applicant and/or developer submit a cost estimate for completion of the required public improvements. The estimate must be prepared by a registered professional engineer licensed in Pennsylvania and must be certified to "be a fair and reasonable estimate" of the cost of completion of the improvements. The cost estimate is to be calculated as of 90 days following the date scheduled for completion by the developer. This projection assures the municipality will hold sufficient funds in the face of future inflation to construct the public improvements in the event of default. Where the estimated costs of completion would be subject to prevailing wage if completed by the municipality, the municipality may recognize prevailing wage in determining the amount of the required financial security. The municipal engineer is authorized to review the estimate and recommend its acceptance, or not if the estimate is determined by the municipal engineer to be insufficient. A municipality may refuse to accept the original or revised estimated cost for good cause shown. If the applicant and municipality are unable to agree, a mutually chosen engineer establishes a cost estimate. The amount of financial security required of the developer should equal 110 percent of the estimated cost.

The municipality is also allowed to adjust the amount of security annually based on actual cost of completed improvements in comparison to scheduled completion dates and thus may require posting of additional security over time to assure it equals 110 percent of the cost of completion of any remaining required public improvements.

As construction proceeds, a developer may ask for the release of the financial security for completed required public improvements. Any such request must be in writing to the municipality. Upon receipt of the request, the municipality has 45 days to have its municipal engineer certify that work on the improvements was completed according to final plan approval. Within 15 days of receipt of the municipal engineer's report, the governing body must provide written notification as to its decision regarding partial release of the developer's financial security.

The municipality may continue to hold 10 percent of the financial security even if more than 90 percent of the improvements are completed. However, once improvements are totally completed by the developer, a municipality must return the final 10 percent even if the municipality decides not to accept dedication.

Where the municipality accepts dedication of improvements, it may require posting of additional financial security to secure the structural integrity of the constructed improvements subject to the design and specifications depicted on the final plan. Such financial security can be held for a period of only 18 months and may not exceed 15 percent of the actual cost of constructing the improvements.

Regardless of when the improvements are constructed, the municipality should establish an inspection procedure to carefully monitor progress of improvements construction. This procedure will go a long way toward assuring that sufficient security balance is available if the municipality is required to complete the improvements. It also assures that the development is built as the approved plans indicate. The municipality is authorized to charge the applicant/developer for the costs incurred by the municipality for inspection of the improvements.

## **Building Permits**

Permits to build or construct improvements to real estate are inextricably related to land development regulations. This is an effective pressure point and should not be lost when illegal or unauthorized improvements are in process. No building permit should be issued unless the lot or parcel of ground is part of an approved and recorded plan.

When financial security is provided in lieu of completion of required improvements, the MPC allows for development of the subdivision to proceed. The MPC specifically requires building permits be issued for the lots in the subdivision. Section 509(m) of the MPC provides that “the municipality shall not condition issuance of building, grading, or other permits relating to the erection or placement of improvements, including buildings, upon the lots or land as depicted upon the final plat upon actual completion of the improvements depicted upon the approved final plat.”

Additionally, when financial security is provided, Section 509(m) of the MPC specifically calls for occupancy permits to be issued for buildings constructed on the lots in the subdivision, subject to the following: (i) “the improvement of the streets providing access to and from existing public roads to such building or buildings to a mud-free or otherwise permanently passable condition” and (ii) “completion of all other improvements as depicted upon the approved plan, either upon the lot or lots or beyond the lot or lots in question if such improvements are necessary for the reasonable use of or occupancy of the building or buildings.”

## XII. Subdivision and Land Development Best Practices

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Several regulatory best practices have emerged in recent decades to help municipalities achieve a win-win of quality development and positive impact to the community, the environment, and the local government. These include the following:

- **Conservation Design Regulations** – The incorporation of conservation techniques into local zoning and subdivision and land development ordinances is detailed in the *Growing Greener: Conservation by Design* handbook published by the Natural Lands Trust and DCNR. This publication summarizes and graphically illustrates how municipalities can use the development process to their advantage to protect interconnected networks of open space: natural areas, greenways, trails and recreational lands. The handbook is available online at [http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr\\_002285.pdf](http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_002285.pdf).
- **Traditional Neighborhood Development (TND)** – Article VII-A of the MPC authorizes municipalities to utilize traditional neighborhood development (TND) as a means – among other objectives – to encourage innovations in residential and non-residential development and renewal. TND promotes compact development to achieve a harmonious mix of housing accompanied by neighborhood scaled commercial facilities (e.g., shops, eateries) and civic uses such as libraries, churches, interspaced among grid-like streets, sidewalks, and village greens. The Pennsylvania Lands Trust has published an online conservation guide pertaining TND at <http://conservationtools.org/guides/show/46-Traditional-Neighborhood-Development#ixzz35jyH4dD9>
- There are a variety of **new design approaches** reflecting current science and engineering and promoting low-impact, low-cost development. Design ideas include reduced standards for lot dimensions, streets, and parking; decentralized management of stormwater; and protection of open space and natural systems. The results are less land disturbance and environmental impact, lower cost to developers and home-buyers, and lower cost for municipal services and maintenance. The Pennsylvania Housing Resource Center published a comprehensive set of low-impact, low-cost design standards at <http://www.engr.psu.edu/phrc/Land%20Development%20Standards.htm>.

Finally, The Conservation Fund's and DCNR's *Better Models for Development: Ideas for Creating More Livable and Prosperous Communities* publication presents six principles for better development. Each principle is illustrated with numerous examples of alternatives to conventional development that are more sustainable, efficient, and attractive than conventional development approaches. This publication is available online at [http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr\\_002279.pdf](http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_002279.pdf).

## **XIII. Administrative Fees, Reviews, and Inspections**

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### **Administrative Fees**

The municipality may levy administrative fees on applicants for subdivision or land development plan approval to recover all or part of its costs of administration of the subdivision and land development ordinance. Administrative fees are to be based on a schedule established by ordinance or resolution. A fee schedule adopted by resolution can be easily updated without the legal and advertising expenses of an ordinance amendment.

Administrative fees must be reasonable and not excessive, defined in terms of an amount sufficient to cover the actual cost of making the necessary review of the plan or inspection of the development for compliance with the approved plan. Administrative fees should not exceed the rate or cost customarily charged to the municipality by the engineer or consultant when fees are not reimbursed or otherwise imposed on applicants. Fees may not include municipal costs related to an appeal of the decision on an application. A municipality cannot use its power to charge administrative fees for the purpose of raising general revenue or to frustrate or discourage subdivision and land development activity. Generally, if a fee is greater than the cost of administering the regulation, it will be considered unauthorized tax and will most likely be invalidated by the courts.

Administrative fee schedules should be monitored and regularly reviewed to ensure both that fees do not exceed the actual costs and fees are sufficient to recover the legitimate costs of plan review and inspection borne by the municipality.

### **Filing Fees**

A filing fee is commonly used as a means to collect administrative fees up front and is generally charged at the time the preliminary plan (and frequently also at the time the final plan) is submitted for approval. This fee is usually a specified flat amount and may also include an additional amount for each lot in the subdivision or by type or size of a land development. Some municipalities also provide for additional fees to be billed during the review process to recoup actual costs incurred during the review process that exceed the filing fee.

A municipality may elect to escrow the administrative fee (particularly where it reflects expected municipal engineering review and inspection costs) and require that it be supplemented or refunded as circumstances dictate.

### **Professional Consultant Review Administrative Fees**

The MPC authorizes a municipality to recover the costs of its professional consultants' activities relating to a proposed subdivision or land development plan. The MPC defines "professional consultants" broadly to include "persons who provide expert or professional advice, including, but not limited to, architects, attorneys, certified public accountants, engineers, geologists, land surveyors, landscape architects or planners."

Most municipalities levy an engineering fee to recover the cost of the municipal engineer's review of the plan, including related activities, such as the review of cost estimates required for financial security for the completion of required public improvements. Since such costs are usually not known at the time a plan is submitted, the municipality may issue invoices to the developer as actual costs are incurred. As an alternative to direct billing, a municipality may include an estimate, based on past experience, of the review costs for a given type or size of a plan in its filing fee. In such case, a municipality may further provide for the collection of actual costs incurred in excess of the filing fee.

The developer/applicant must pay the administrative fee within the time established by the local subdivision and land development ordinance. The receipt of payment of the administrative fee can be made a prerequisite for plan acceptance for review or a condition of approval to be satisfied prior to approved plan recordation.

## **Inspections**

It may be advantageous to establish a separate administrative fee for inspections of construction when the subdivision and/or land development requires the construction of improvements, such as roads, utilities, and stormwater management facilities. Such administrative fees may be charged and recovered through invoices as inspections proceed, made a part of the application filing fee, and/or charged separately to recover actual costs incurred in excess of the inspection costs estimated for the filing fee.

The municipality has the authority to recover the costs of administering the subdivision and land development ordinance dollar-for-dollar from the applicant seeking review and approval of a subdivision or land development plan. A municipality may elect instead to cover the costs through allocation of the municipality's general revenues.

## **Fee Disputes**

Section 503(1) (i) of the MPC requires that the fees of professional consultants be shown in an itemized billing. Interim billing or municipal escrow is also permitted. If the applicant disputes the review fees charged, Sections 503(1)(i)-(iii) and 510(g)(1)-(5) set forth the dispute resolution procedures which include the applicant providing notice of the dispute and appointment of another professional consultant to serve as an arbitrator if the applicant and municipality do not agree on the amount of expenses. The cited sections prescribe specific steps and timeframes for dispute resolution.

## XIV. Enforcement Procedures

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### Enforcement

Section 515.1 of the MPC specifically allows remedies for enforcement of a subdivision and land development ordinance by law or in equity to: (1) restrain, correct or abate violation of subdivision and land development regulations, (2) prevent unlawful construction, (3) recover damages, and (4) prevent illegal occupancy.

In addition, a municipality may refuse to issue any permit or grant any approval required to further improve or develop any property in violation of the subdivision and land development ordinance. This authority to deny permits or approvals applies to:

1. The owner of record at the time of such violation.
2. The vendee or lessee of the owner of record at the time of such violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.
3. The current owner of record who acquired the property subsequent to the time of violation without regard as to whether such current owner had actual or constructive knowledge of the violation.
4. The vendee or lessee of the current owner of record who acquired the property subsequent to the time of violation without regard as to whether such vendee or lessee had actual or constructive knowledge of the violation.

The MPC authorizes a municipality, as a condition for granting a permit or approval, to require a subsequent owner, vendee, or lessee to comply with conditions that would have been applicable to the property at the time the applicant acquired an interest in the real property.

### Court Actions

The most appropriate action for a municipality seeking enforcement to initiate depends on the severity of the violation. If an imminent threat exists to public health, safety, or welfare, the court of common pleas should be petitioned for an injunction. An injunction is a court order to restrain, correct or abate violations and can be used to prevent an individual from performing specific acts.

The activity to be enjoined could be commencement of work on a foundation or sale of land without proper subdivision plan approvals. Injunctions constitute severe action and should only be used when progressive attempts to enforce an ordinance have failed or where continued activity constitutes a clear and serious threat to the health and safety of the general public.

Under circumstances that are neither as severe nor urgent, compliance can be obtained by taking action at a lower level than the court of common pleas. The form any action should take depends upon the specific problem. For example, if onsite improvements are not installed or not constructed according to standards required in the approved plan, notifying the developer directly about the substandard work and placing a hold on any request for even a partial release of security might gain compliance. Other situations may require a stop-work order to enforce the ordinance.

What follows is a description of the various enforcement actions that may be taken given various circumstances beginning with suggested progressive enforcement actions.

1. After inspection, contact the violator to bring the municipal concerns as well as specific provisions of the ordinance to the attention of the violator. A simple handshake agreement could achieve compliance at this point in the process.

2. Serve formal written notice of violation identifying corrective action that will resolve the violation. The notice should contain a deadline for compliance.
3. In consultation with the municipal solicitor, proceed with a legal action appropriate to the severity of the violation.

The basic objective is to obtain compliance. It is best to resolve the issue at the lowest possible level, unless there is an imminent peril to life or property. Most reasonable persons will respond to a site inspection notice or a letter of a possible violation (a violation notice). Such a course eliminates the need to take further action such as filing a complaint with the district justice or an injunction action in court. By following a progressive procedure, a municipality is building a case with supportive documentation that reasonable attempts were made by the municipality to gain compliance

## Enforcement Remedies

The MPC provides that only the municipality has the right to commence action for enforcement. In the event a person is found liable in a civil enforcement proceeding of violating the municipal subdivision and land development ordinance, the court may impose of judgment not more than \$500 plus court costs including attorneys' fees incurred by the municipality. Each day the violation continues constitutes a separate violation, unless the district justice determines a good faith basis existed for the person to believe there was no violation. In such a situation, there is deemed to have been only one violation until the fifth day following the district justice's determination of the violation, and thereafter each day constitutes a separate violation.

## Remedies to Complete Improvements

**What happens when a required public improvement is left incomplete or never begun?** Section 511 of the MPC provides "Remedies to Effect Completion of Improvements." If required improvements are not installed according to the final plan or recorded plat, the governing body is granted the power to enforce any financial security provided by the developer to the municipality by appropriate legal or equitable remedies. Further, if such improvement guarantees are insufficient to pay the cost of installing the required improvements, the municipality, at its option, may install part or all of the improvements and may then institute legal or equitable action to recover public funds. All funds recovered shall be used solely for installation of improvements covered by such financial security and may not be used for any other municipal purpose.



## XV. Improving the Subdivision and Land Development Review Process

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A subdivision and land development ordinance helps achieve noble and lofty goals for the good of a community and its residents and businesses. Yet there are often news accounts of local reviews of development projects that are contentious and even adversarial. A subdivision and land development ordinance and its review-and-approval process can be complex and time-consuming. Much of this is rooted in the process as authorized by the Pennsylvania Municipalities Planning Code which has changed little since original enactment in 1968. Still, there are measures a local government can take, consistent with existing law, to lessen tensions and make the development review-and-approval process more of a win-win for all parties involved.

### Differing Perspectives

Different parties involved in the development review process – the local government, developers, and citizens – bring different perspectives to the process. Development reviewers should be aware of and take into account the differing perspectives.

- **Local government perspectives** – Local officials have the challenge of representing the public interest. Ideally the public interest is embodied in a comprehensive plan. Practically, local officials are beholden to multiple bottom lines: generation of tax revenue vs. cost to serve development; different neighborhood interests; politics; limited administrative capacity; etc.
- **Developer perspectives** – Developers want to make a profit and are very sensitive to the money cost of time. Most are not averse to typical regulations, but desire the regulations and development review process to be clear and predictable. More developers than perceived are interested in doing a quality project that contributes to the community.
- **Citizen perspectives** – Citizens also want to see the public interest served, but their interests are narrower and often based on protecting their own homes and neighborhoods vs. the uncertain change new development might bring.

### Challenges and Issues

In 2013, the Pennsylvania State Planning Board and Department of Community and Economic Development studied the local development review-and-approval process in Pennsylvania. With input from local officials, planners, developers, engineers, and attorneys, the study identified several challenges and issues:

- **The local development review process is complex.** The MPC-authorized subdivision and land development process has complex details. Many developments also involve zoning approvals – conditional uses or special exceptions, variances, amendments – which have different time frames and approval bodies. Many developments involve state and federal permitting.
- **The process can be time-consuming.** A single subdivision or land development approval, especially one that involves multiple regulatory approvals, can take a year or more.
- **The process can be unpredictable.** Different counties and municipalities have different regulations and variations on the review-and-approval process.
- **There are capacity issues on both the public and private side.** Many local governments lack staff time and expertise to adequately review developments. Many development applications lack complete information and fail to address regulatory requirements. Both end up causing delays and additional expenses.

## Recommendations to Improve the Process

Under existing authority of law, there are process improvements local governments can implement to address the challenges and issues. The improvements are geared to achieve a win-win for local governments, developers, and the community.

- **Intergovernmental cooperation** – There are several options. by intergovernmental cooperation agreement, multiple municipalities can create and share the cost of a joint plan review professional, either as shared staff or as a contracted consultant. This would provide a high level of review capacity for municipalities that could not afford or support it on their own. A cooperative program could also include a common application form, uniform submission requirements, a web-based information and application portal, and consistent process steps for all the municipalities. Further, municipalities could work together to enact more consistent ordinance terminology and standards, or to devise a uniform subdivision and land development ordinance all municipalities enact. Municipalities can cooperate with and utilize the professional capacity of the county. Section 502(c) of the MPC says a municipality may designate the county planning agency (with its concurrence) as the official administrative agency for review and approval of subdivision and land development plans. Section 502(c) also says a municipality may adopt the county subdivision and land development ordinance by reference and administer it as the municipal ordinance.
- **Team approach** – Several counties in Pennsylvania utilize a team approach to coordinate and expedite reviews and approvals for larger-scale, higher-profile, or more economically-significant developments. Typically a county planning or economic development agency serves as the lead and coordinates a team of local officials and agencies from multiple levels of government involved in development review. The team sets an expedited review schedule by mutual agreement, works together to address problems as they arise, and helps promote a quality development project.
- **Tiered reviews** – Several counties and municipalities provide for different tiers of development review. Smaller or lower impact subdivisions and developments are subject to fewer steps over less time than larger or higher impact subdivisions and developments. For instance, one county provides planning department staff with authority to review and approve minor subdivisions without the additional step and time of planning commission approval. Major plans must be approved by the planning commission.
- **Express-lane reviews** – A practice done by some planning agencies in other states is to offer an optional express review that bypasses the “normal” queue of development reviews. The express review is done upon request and payment of a higher review fee by a developer/applicant. The planning agency uses the fee to pay an outside-party consultant to perform an expedited review without slowing down the normal queue of reviews and without lessening the diligence applied to the expedited review.

## Practitioner Insights

Below are additional suggestions for elected officials, planning commission members, planners, engineers, and attorneys who work on the front lines and interact with developers and the public in administering a subdivision and land development ordinance:

- **Be proactive.** Perform technical compliance reviews as promptly as possible. Provide them to the applicant and parties involved in the review well in advance of meetings. Catch problems and deficiencies in the first review. The sooner parties talk, the easier it is to resolve problems. Respond to calls and e-mails promptly, within 24 hours.
- **Read and know the ordinance.** “We’ve always done it that way!” is not in the ordinance. Judge compliance by the standards in the ordinance. If an applicant meets the standards, the development must be approved. If not, the development must be denied unless waivers or modifications are granted or approval is conditioned on measures to achieve compliance. The municipality cannot require a development to meet standards more restrictive than or not in the ordinance without consent of the applicant.

- **When needed, amend the ordinance.** If literal administration of ordinance standards is not resulting in development consistent with municipal goals, then work on changes to the ordinance. Involve developers and their engineering and design consultants in drafting revisions.
- **Know and stick to the process and timelines.** Don't fight about the process. It is set by the MPC and the municipal ordinance, and it is what it is. Don't introduce any changes or surprises as the process unfolds.
- **Provide clarity.** Give the applicant a copy of the ordinance or the link to it online. Provide information sheets with the application form describing process, timelines, and instructions.
- **Help identify solutions as well as problems and deficiencies.** Help the applicant consider alternatives that will meet the regulations. Conversely, let the applicant make a case for a development proposal that doesn't match the regulations. A different approach may yield equally good or better results, and approval of modifications may be worthwhile.
- **Coordinate the subdivision and land development review with zoning and other local reviews.**
- **Leave political bias and personal opinions out of the process.**
- **Be honest and forthright in dealings with other parties.** Do not be adversarial. Come into dealings with a positive attitude and leave with a positive attitude. Personal reactions – including body language – are tone setters.

## XVI. Conclusion

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The subdivision and land development ordinance is one of the most basic and important types of land use regulations that a municipality can enact. The MPC specifies the procedures as well as certain other items pertaining to the content and adoption of the ordinance. Administering an ordinance necessitates not only knowledge of the MPC and the municipal ordinance provisions, but also thorough plan review and onsite inspections during and after construction phases of the project.

Poorly planned and constructed developments are painful to live with and expensive to correct. Lack of municipal inspections can result in substandard public improvements that could prove to be a subsequent financial hardship to the municipality. Administrative details require prior thought and consideration. A well informed governing body and planning commission can avoid pitfalls, can encourage and guide sound development practices, and can help create a more acceptable environment for all residents of the municipality.

Finally, the authority to adopt and administer planning control measures or regulations has been delegated exclusively to municipalities and counties under the police powers. The courts have consistently reinforced the importance of having a connection between the specific purpose of a regulation and the general health, safety, and welfare of the public. A municipality must be prepared to document that the regulation bears a reasonable relationship to the welfare of the public and that the measure or control in fact advances a legitimate public interest. That interest must not be arbitrary but rather supported by comprehensive analysis of community development goals and objectives.

## XVII. Planning Assistance from DCED

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DCED's Governor's Center for Local Government Services (Center) provides a full range of technical and financial services to all of Pennsylvania's local governments. The Center is the principal state agency responsible for helping with planning and land use matters discussed in this publication.

Local government officials, planners, and other interested individuals have several sources of assistance from the Center:

- **Toll-free telephone number** – 888-223-6837. Callers will be connected with staff that has knowledge of planning, land use, zoning, subdivision and land development, and the PA Municipalities Planning Code.
- **Website** – [www.newPA.com/local-government](http://www.newPA.com/local-government). There are helpful pages under Community Planning, plus information on the topics listed below.
- **Publications** – [www.newPA.com/local-government/publications](http://www.newPA.com/local-government/publications). This and the other nine Planning Series publications listed in the Preface can be downloaded and printed for free, or hard copies can be purchased at cost. The website also has publications with suggested provisions for floodplain management ordinances, plus publications on many topics from fiscal management to intergovernmental cooperation to open meetings.
- **Training** – <https://palocalgovtraining.org>. DCED provides funding for local government training programs via the PA Local Government Training Partnership. There are training courses, videos, and online instruction on a variety of topics, including planning and land use, plus ten fact sheets on planning and land use topics.
- **Land use law library** – [www.landuselawinpa.com](http://www.landuselawinpa.com). DCED and the PA Local Government Training Partnership maintain an online library of significant court cases on zoning, subdivision and land development, and other land use topics.
- **Planning and land use eLibrary** – <http://elibrary.pacounties.org>. DCED and the County Commissioners Association of Pennsylvania maintain an online library of comprehensive plans, zoning ordinances, and subdivision and land development ordinances in effect in Pennsylvania counties, cities, boroughs, and townships.
- **Financial assistance** – [www.newPA.com/find-and-apply-for-funding](http://www.newPA.com/find-and-apply-for-funding). Currently DCED provides funding for local government planning through the Municipal Assistance Program. MAP offers up to 50 percent grants for costs of undertaking comprehensive plans, zoning ordinances, subdivision and land development ordinances, and more.

## XVIII. Other Planning Assistance

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Assistance and training on planning and land use are available from other sources:

- **County planning agencies** – Pennsylvania counties have a long tradition of being a source of capacity and expertise in planning and land use. Currently, every county has a planning commission, department, or both, or other agency like a development department that handles planning matters. Every county has staff involved in planning. Many county planning agencies offer assistance to local governments in their counties.
- **American Planning Association (APA)** – The Pennsylvania Chapter has an annual conference with many speakers and sessions on topics from local to national interest, plus training workshops and other educational events and information: <http://planningpa.org>. The national organization has an annual conference, publications, and a variety of audio, web, and e-learning resources: [www.planning.org](http://www.planning.org).
- **Local government associations** – In addition to programs through the PA Local Government Training Partnership, Pennsylvania's statewide associations representing different categories of local governments also offer annual conferences and training programs, including planning and land use, to their member local governments.
- **Penn State Extension** – Statewide Extension programming includes courses, webinars, and publications on community issues including planning and land use. Within that is the Pennsylvania Municipal Planning Education Institute which offers training programs on planning, zoning, and subdivision and land development: <http://extension.psu.edu/community>.
- **Universities and colleges** – Several Pennsylvania universities and colleges offer degree programs in planning. Others offer planning-related courses in geography or design degrees. Many have a community service objective and assist community groups and local governments with faculty and/or student service projects.

## Appendix I – Ordinance Enactment Procedures

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This is a summary of land use ordinance enactment procedures and is intended for quick and easy reference. However, when you are considering action on an ordinance enactment or amendment, please read the appropriate sections of the MPC. Each section is specifically referenced for this purpose.

The following terms, phrases, and definitions pertain to proper land use ordinance enactment and amendment.

### **Publication, Advertisement and Availability of Ordinances – MPC Section 506**

- (a) Proposed subdivision and land development ordinances and amendments shall not be enacted unless notice of proposed enactment is given in the manner set forth in this section, and shall include the time and place of the meeting at which passage will be considered, a reference to a place within the municipality where copies of the proposed ordinance or amendment may be examined without charge or obtained for a charge not greater than the cost thereof. The governing body shall publish the proposed ordinance or amendment once in one newspaper of general circulation in the municipality not more than 60 days or less than seven days prior to passage. Publication of the proposed ordinance or amendment shall include either the full text thereof or the title and a brief summary, prepared by the municipal solicitor and setting forth all the provisions in reasonable detail. If the full text is not included:
  - (1) A copy thereof shall be supplied to a newspaper of general circulation in the municipality at the time the public notice is published.
  - (2) An attested copy of the proposed ordinance shall be filed in the county law library or other county office designated by the county commissioners, who may impose a fee no greater than that necessary to cover the actual costs of storing said ordinances.
- (b) In the event substantial amendments are made in the proposed ordinance or amendment, before voting upon enactment, the governing body shall at least 10 days prior to enactment readvertise, in one newspaper of general circulation in the municipality, a brief summary setting forth all the provisions in reasonable detail together with a summary of the amendments.
- (c) Subdivision and land development ordinances and amendments may be incorporated into official ordinance books by reference with the same force and effect as if duly recorded therein.

**Public Hearing.** A formal meeting held pursuant to public notice by the governing body or planning agency, intended to inform and obtain public comment, prior to taking action in accordance with this act. *MPC Section 107.*

**Public Meeting.** A forum held pursuant to notice under 65 Pa. C.S. CH 7 (Relating to open meetings). *MPC Section 107.*

**Public Notice.** Notice published once each week for two successive weeks in a newspaper of general circulation in the municipality. Such notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days and the second publication shall not be less than seven days from the date of the hearing. *MPC Section 107.*

### **Selected Definitions from the Sunshine Act (Act 84 of 1986)**

**Deliberation.** The discussion of agency business held for the purpose of making a decision.

**Meeting.** Any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action.

**Official action.**

1. Recommendations made by an agency pursuant to statute, ordinance or executive order.
2. The establishment of policy by any agency.
3. The decisions on agency business made by an agency.
4. The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

**Special meeting.** A meeting scheduled by an agency after the agency's regular schedule of meeting has been established.

**Enactment of an Original Subdivision and Land Development Ordinance**

1. Unless the proposed subdivision and land development ordinance is prepared by the planning agency, the governing body shall submit the proposed ordinance to the planning agency for recommendations at least 45 days prior to the required public hearing held by the governing body. *MPC Section 504(a)*.
2. At least 45 days prior to the required public hearing held by the governing body the municipality shall submit the proposed ordinance to the county planning agency for recommendations. *MPC Section 504(a)*.
3. A governing body must hold a public hearing pursuant to public notice prior to enactment. If notice of the hearing is published in compliance with MPC section 506, notice of enactment per item 4 (below) may not be required provided that a vote to enact occurs within 60 days of the last date of publication. *MPC Section 504(a)*.
4. To be legally enacted, notice of proposed enactment must be published at least once in one newspaper of general circulation not more than 60 days or less than seven days prior to passage. Publication of public notice of the hearing in accordance with item 3 (above) satisfies the requirement for legal enactment of the ordinance. *MPC Section 506(a)*.
5. If substantial changes are made to the proposed ordinance, before voting on the enactment, the governing body shall readvertise once at least 10 days prior to the scheduled date of enactment a brief summary of all the provisions in reasonable detail together with a summary of the changes. *MPC Section 506(b)*.
6. Within 30 days after enactment a copy of the ordinance must be forwarded to the county planning agency. In counties without a planning commission a copy should be sent to the county commissioners or other office designated by the commissioners. *MPC Section 504(b)*.

**Enactment of an Amendment to a Subdivision and Land Development Ordinance**

1. When an amendment is prepared by other than a municipal planning agency, the governing body must submit the amendment to the municipal planning agency at least 30 days prior to the public hearing that is to be conducted by the governing body to provide the planning agency an opportunity to submit recommendations. *MPC Section 505(a)*.
2. At least 30 days prior to the public hearing to be held by the governing body the municipality shall submit the proposed amendment to the county planning agency for recommendations. *MPC Section 505(a)*.
3. A governing body must hold a public hearing pursuant to public notice prior to enactment. If notice of the hearing is published in compliance with MPC section 506, notice of enactment per item 4 (below) may not be required provided that a vote to enact occurs within 60 days of the last date of publication. *MPC Section 505(a)*.
4. To be a legally enacted amendment, notice of proposed enactment must be published at least once in one newspaper of general circulation not more than 60 days or less than seven days prior to passage. Publication of public notice of the hearing in accordance with item 3 (above) satisfies the requirement for legal enactment of the amendment. *MPC Section 505(a)*.



5. If substantial changes are made to the proposed amendment before voting on the enactment, the governing body shall readvertise once at least 10 days prior to the scheduled date of enactment, a brief summary of all the provisions in reasonable detail together with a summary of the changes. *MPC Section 506(b)*.
6. Within 30 days after enactment, a copy of the ordinance must be forwarded to the county planning agency. In counties without a planning commission a copy should be sent to the county commissioners or other office designated by the commissioners. *MPC Section 505(b)*.

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